U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 August 2005

In the Matter of:

DAVID J. ESTEP,
Claimant,

v. **Case No.: 2003-BLA-06597**

PIKEVILLE COAL COMPANY,
Employer, and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Party-in-Interest.

Appearances:

Dennis James Keenan, Esq., Hinkle & Keenan, South Williamson, KY
For Claimant

Lois Kitts, Esq., Baird & Baird, PSC, Pikeville, KY
For Employer

Before: PAMELA LAKES WOOD
Administrative Law Judge

DECISION AND ORDER DENYING BENEFITS

This proceeding arises from a claim for benefits under the Black Lung Benefits Act, 30 U.S.C. §901, *et. seq.* (hereafter "the Act") filed by Claimant David J. Estep ("Claimant") on July 2, 2002. There were no previous Federal black lung claims filed. The putative responsible operator is Pikeville Coal Company ("Employer") which is self insured.

Part 718 of title 20 of the Code of Federal Regulations is applicable to this claim,[1] as it was filed after March 31, 1980, and the regulations amended as of December 20, 2000 are also applicable, as this claim was filed after January 19, 2001. 20 C.F.R. §718.2. In *National Mining Assn. v. Dept. of Labor,* 292 F.3d 849 (D.C. Cir. 2002), the U.S. Court of Appeals for the D.C. Circuit rejected the challenge to, and upheld, the amended regulations with the exception of

[1] Section and part references appearing herein are to Title 20 of the Code of Federal Regulations unless otherwise indicated.

several sections.[2] The Department of Labor amended the regulations on December 15, 2003, solely for the purpose of complying with the Court's ruling. 68 Fed. Reg. 69929 (Dec. 15, 2003).

The findings of fact and conclusions of law that follow are based upon my analysis of the entire record, including all evidence admitted and arguments made. Where pertinent, I have made credibility determinations concerning the evidence.

STATEMENT OF THE CASE

The claim form in the instant case was filed on July 2, 2002, but Claimant indicated his intention to open a Federal Black Lung Claim on February 1, 2002. (DX 1, 3).[3] Claimant was examined for the Department of Labor by Glen Baker, M.D. on August 15, 2002. (DX 10). On January 21, 2003, the District Director issued a Schedule for the Submission of Additional Evidence, which stated that Claimant would not be entitled to benefits if a decision were issued at that time and that the named coal mine operator ("Pikeville Coal Company") was the responsible operator and was self insured in care of Underwriters Safety & Claims. (DX 19). A Proposed Decision and Order, Denial of Benefits (issued by the District Director on May 16, 2003) determined that the Claimant was not entitled to benefits because the evidence did not show that the Claimant had pneumoconiosis, that the disease was caused at least in part by his coal mine work, or that he was totally disabled by the disease. (DX 24). The District Director also found that Claimant worked as a coal miner for "19.07 years, from 1973 to June 4, 1994." *Id.* The responsible operator was again identified as "Pikeville Coal Company." *Id.* Claimant, through counsel, requested a hearing and the case was transferred to the Office of Administrative Law Judges for a hearing on September 4, 2003. (DX 25, 29).

A hearing in the above-captioned matter was held on August 11, 2004 in Pikeville, Kentucky. All parties, including the Director, submitted Designation of Evidence/BLBA Evidence Summary Forms. The Claimant was the only witness to testify. At the hearing, Director's Exhibits 1 through 29 ("DX 1" through "DX 29"). Claimant's Exhibit 1 ("CX 1"), and Employer's Exhibits 1 through 10 ("EX 1" through "EX 10") were admitted into evidence. The record closed at the end of the hearing and the case was submitted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issues/Stipulations

The issues before me are timeliness of the claim, dependency (of one dependent), existence of pneumoconiosis, its casual relationship with coal mine employment, total disability, and causation of total disability (DX 29, Tr. 7-8). The issue of length of coal mine employment was withdrawn and parties stipulated to 18 years of coal mine employment. *Id.* Employer also

[2] Several sections were found to be impermissibly retroactive and one which attempted to effect an unauthorized cost shifting was not upheld by the court.

[3] Director's Exhibits, Claimant's Exhibits, and Employer's Exhibits, admitted into evidence at the August 11, 2004 hearing, will be referenced as "DX", "CX", and "EX", respectively, followed by the exhibit number, and the hearing transcript will be referenced as "Tr." followed by the page number.

agreed to the dependency of one dependent for augmentation purposes, contingent upon Claimant's consistent testimony. *Id.*

Medical Evidence

Interpretations of chest X-rays taken on August 15, 2002 and December 7, 2002, all of which utilize the ILO system and are in compliance with the regulatory standards, are summarized below.

Exhibit No./ Party designating	**Date of X-ray/ Reading**	**Physician/ Qualifications**[4]	**Interpretation**
DX 13 DOL Exam	**08/15/2002** same	G. Baker B-reader, Pul.	Pneumoconiosis 1/0, q/p, upper 4 zones. Quality 1
DX 14 DOL Exam [Quality reading]	08/15/2002 02/06/2002	P. Barrett BCR, B-reader	Quality 1 [Quality Reading Only].
DX 22 Employer Rebuttal to DOL Exam.	08/15/2002 03/17/2003	A. Poulos B-reader, BCR	Completely negative; "lung fields are clear." Quality 1
EX 7 Employer Initial	**12/07/2002** same	A. Dahhan B-reader, Pul.	Completely negative, "0/0." Quality 1.
EX 4 Employer Initial	12/07/2002 01/28/2003	D. Halbert B-reader, BCR	Negative for pneumoconiosis. Linear scar left base. Quality 2.

Dr. Halbert also gave a deposition on July 15, 2003 at which he explained his x-ray reading further. (EX 3).

Pulmonary function tests taken on August 15, 2002 (DX 12) (DOL Baker examination) and December 7, 2002 (EX 7) (Dahhan examination, Employer Initial Evidence) produced the following results, both of which were taken pre-bronchodilator:

Exhibit No.	**Date/ Physician**	**Age/Height**	**FEV1**	**FVC**	**MVV**	**FEV1/FVC**
DX 12	08/15/2002 G. Baker	66 69 inches [175 cm.]	2.66 (pre)	3.51 (pre)	None	76% (pre)
EX 7	12/07/2002 A. Dahhan	66 67 inches [171 cm.]	3.01 (pre)	3.58 (pre)	55 (pre)	84% (pre)

[4] "BCR" refers to a board certified radiologist and "Pul." refers to a physician who is board certified in internal medicine with the subspecialty of pulmonary disease. A B-reader is a physician certified by NIOSH to read x-rays.

Dr. Matthew A. Vuskovich, who is board certified in occupational medicine, evaluated the PFTs taken during the DOL examination as rebuttal on behalf of the Employer. He validated the study but found no evidence of obstructive or restrictive disease. (EX 9).

Under subparagraph (i) of section 718.204(b)(2), total disability is established if the FEV1 value is equal to or less than the values set forth in the pertinent tables in 20 C.F.R. Part 718, Appendix B, for the miner's age, sex and height, if in addition, the tests reveal qualifying FVC or MVV values under the tables, or an FEV1/FVC ratio of less than 55%. Neither test produced qualifying results based upon the FEV1 values and either height recorded.

Arterial blood gases were taken at rest on August 15, 2002 (DOL Baker examination) (DX 11) and at rest and exercise on December 7, 2002 (Baker examination, Employer Initial Evidence) (EX 7). The ABGs produced the following values, which were not qualifying under Part 718, Appendix C:

Exhibit No.	**Date**	**Physician**	**pCO2**	**pO2**	**Qualifying?**
DX 11	08/15/2002	G. Baker	42 (rest)	74 (rest)	No
EX 7	12/07/2002	A. Dahhan	41.2 (rest)	85.2 (rest)	No
same	same	same	44.9 (end of partial exercise)	93.1 (end of partial exercise)	No

Dr. Matthew A. Vuskovich, who is board certified in occupational medicine, evaluated the ABGs taken during the DOL examination as rebuttal on behalf of the Employer. He noted that ABG PO2 values above 60 were crude measurements of pulmonary function while values below 60 (which were not present) suggested the presence of a serious acute and/or chronic life threatening condition. (EX 9). However, he did not invalidate the study. *Id.* Dr. Dahhan's exercise values are questionable because the exercise was terminated due to fatigue, and the measurements were drawn after exercise, not "during exercise," as required by the quality standards regulation. *Id. See* 20 C.F.R. §718.105(b).

Medical opinions were rendered by three physicians:

(1) Dr. Glen Baker, a board certified pulmonologist,[5] conducted the August 15, 2002 Department of Labor examination of the Claimant (DOL examination) (DX 12). In a DOL form report (which provided detailed findings concerning the Claimant's history, physical findings, and test results), Dr. Baker listed the following cardiopulmonary diagnoses: (1) coal worker's pneumoconiosis of 1/0 profusion based upon the abnormal chest x-ray and coal dust exposure; (2) chronic bronchitis based upon history of cough, sputum production and wheezing; and (3) hypoxemia, based upon the PO2. *Id.* He attributed the etiology of the first condition to coal dust exposure and the latter two conditions to "coal dust exposure/cigarette smoking." *Id.* He found the degree of impairment to be minimal. However, in the attached form addendum, he checked the box for "No impairment" and he indicated that Claimant had the respiratory capacity to perform the work of a coal miner or comparable work in a dust-free environment. (DX 12).

[5] As used herein, a board-certified pulmonologist is a physician who is board certified in internal medicine and the subspecialty of pulmonary diseases.

(2) Dr. A. Dahhan, a board certified pulmonologist, examined the Claimant for the Employer on December 7, 2002 (Employer's Initial Evidence) (EX 7). His report of December 10, 2002, related to that examination, including a history and examination findings with attached test results. In that report, Dr. Dahhan stated, to a reasonable degree of medical certainty, that (1) Claimant had no evidence of occupational pneumoconiosis or pulmonary disability secondary to coal dust exposure; (2) Claimant retained the respiratory capacity to continue his previous coal mining work or a job of comparable physical demand; and (3) Claimant's cancer of the larynx post therapy was not caused by, related to, contributed to or aggravated by the inhalation of coal dust or coal workers' pneumoconiosis. (EX 7). Dr. Dahhan essentially reiterated his findings at his December 9, 2003 deposition. (EX 1).

(3) Dr. David Rosenberg, a board certified pulmonologist who is also board certified in occupational medicine, prepared a July 7, 2004 medical report for the Employer (Employer's Initial Evidence) (EX 8). Dr. Rosenberg opined that Claimant did not have either simple or complicated CWP and he also did not have chronic obstructive pulmonary disease (COPD); from a functional perspective, he did not have any significant obstruction or restriction; and his oxygenation was preserved, particularly on exercise. *Id.* Dr. Rosenberg further concluded that from a functional perspective, Claimant clearly could perform his previous coal mining job or similarly arduous types of labor. *Id.*

Background and Employment History

Claimant was the only witness to testify at the hearing. He indicated that he was born in March 1936 and was currently married (to Rose Marie Estep), to whom he had been married for three years. (Tr. 10). Claimant testified that his wife's child (Jarett Workman) was still in school and was living with him; however, Claimant has not adopted him and he receives support from his father. (Tr. 10-11, 24).

Claimant testified that his last coal mine employment was with Pikeville Coal Company, for which he worked for approximately 17 1/2 years, ending his employment on June 4, 1994. (Tr. 11, 15-16). All of his work was underground, including work as a general laborer, equipment cleaner, and mechanic helper. (Tr. 11-12). As a equipment cleaner, a job which he performed for 10 to 12 years, he worked at the face area of the mine (where the coal was cut), cleaning any equipment that had been written up by a mine inspector (Tr. 12). To clean the equipment, he used a high pressure hose to apply water and a solution. (Tr. 12). The equipment involved was the continuous miner, the bolter, the shuttle car, or whatever else was written up. (Tr. 13). The job was "pretty dusty" and his face and clothes would be covered with black coal dust at the end of the shift (Tr. 13-14). He frequently coughed or spit up coal dust while working. (Tr. 14). Work as a general laborer included working on the belts, cleaning sections, rock dusting, and shoveling. (Tr. 14). That job was also dusty and he returned home with his face black and his clothes dirty. (Tr. 15).

The reason that Claimant stopped working on June 4, 1994 was that Dr. King brought him out due to his back trouble. (Tr. 15-16). Mostly his right hip was involved and he experienced back pain which worsened with age. (Tr. 16-17, 25). He also had breathing problems at that time but no doctor told him that he was disabled due to black lung. (Tr. 25).

Claimant currently is receiving disabled social security and a U.M.W.A. regular union pension. (Tr. 16, 26). He also received Black Lung benefits from the State of Kentucky in 1992 or 1993, which were paid over a period of time, stopping about five years before (i.e., 1999); Dr. Emory Lane in Louisville was involved but he does not otherwise recall the specifics. (Tr. 23).

At the time of the hearing, Claimant testified that he was experiencing breathing problems when he walked fast, climbed stairs, or otherwise exerted himself. (Tr. 17). After he climbed the stairs to the courtroom, he was out of breath. (Tr. 17). Claimant estimated that he can walk along the mall, for approximately the length of a football field, at a normal pace, and he could probably walk back once or twice. (Tr. 18). He has difficulty sleeping due to his breathing and he has problems breathing in hot weather (Tr. 17-18). Claimant testified that he is not on any medications or inhalers for his breathing, although he takes Lortab once in a while for his hip. (Tr. 19). He has never been hospitalized for a lung problem. (Tr. 19, 26). He has not been treated for black lung, although he saw Dr. Emory Lane when he got the State black lung benefits. (Tr. 26).

On his smoking history, Claimant testified that he began at approximately age 22 or 23 (approximately 1959) and gave it up six months prior to the hearing (approximately February 2004). (Tr. 19-20). Back years ago, he smoked two packs per day but reduced it to a pack every three to four days five years before the hearing (approximately August 1999).

On a typical day, Claimant will work a little bit in his yard. (Tr. 20). He mows the lawn once per week with a push mower, a process that takes an hour and one half to two hours because he frequently has to stop and rest due to breathing problems. (Tr. 20-21). Claimant cannot run or do any sports. (Tr. 22). He has not hunted for five years, and he does not think that he could deer hunt any more, because he doubts that he could climb the mountains now. (Tr. 22-23).

In addition to Dr. King, Claimant was treated by Dr. Hazelette for throat cancer five years before (approximately 1999). (Tr. 21, 26-27). He plans to see Dr. Hazelette in six months for his throat; he was supposed to visit him every three months but stopped seeing him for a while because he never found anything wrong. (Tr. 27).

Discussion and Analysis

Evidentiary Limitations

My consideration of the medical evidence is limited under the regulations, which apply evidentiary limitations to all claims filed after January 19, 2001. 20 C.F.R. §725.414. Section 725.414, in conjunction with Section 725.456(b)(1), sets limits on the amount of specific types of medical evidence that the parties can submit into the record. *Dempsey v. Sewell Coal Co.,* 23 B.L.R. 1-47 (2004) (en banc), BRB No. 03-0615 BLA (June 28, 2004) (en banc) (slip op. at 3), *citing* 20 C.F.R. §§725.414; 725.456(b)(1). Under section 725.414, the claimant and the responsible operator may each "submit, in support of its affirmative case, no more than two chest X-ray interpretations, the results of no more than two pulmonary function tests, the results of no

more than two arterial blood gas studies, no more than one report of an autopsy, no more than one report of each biopsy, and no more than two medical reports." *Id., citing* 20 C.F.R. §725.414(a)(2)(i),(a)(3)(i). In rebuttal of the case presented by the opposing party, each party may submit "no more than one physician's interpretation of each chest X-ray, pulmonary function test, arterial blood gas study, autopsy or biopsy submitted by" the opposing party "and by the Director pursuant to §725.406." *Id., citing* 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii). Following rebuttal, each party may submit "an additional statement from the physician who originally interpreted the chest X-ray or administered the objective testing," and, where a medical report is undermined by rebuttal evidence, "an additional statement from the physician who prepared the medical report explaining his conclusion in light of the rebuttal evidence." *Id.* "Notwithstanding the limitations" of section 725.414(a)(2),(a)(3), "any record of a miner's hospitalization for a respiratory or pulmonary or related disease, or medical treatment for a respiratory or pulmonary or related disease, may be received into evidence." *Id., citing* 20 C.F.R. §725.414(a)(4). Medical evidence that exceeds the limitations of Section 725.414 "shall not be admitted into the hearing record in the absence of good cause." *Id., citing* 20 C.F.R. §725.456(b)(1).

The parties cannot waive the evidentiary limitations, which are mandatory and therefore not subject to waiver. *Phillips v. Westmoreland Coal Co.,* 2002-BLA-05289, BRB No. 04-0379 BLA (BRB Jan. 27, 2005) (unpub.) (slip op. at 6).

The Benefits Review Board discussed the operation of these limitations in its en banc decision in *Dempsey, supra.* First, the Board found that it was error to exclude CT scan evidence because it was not covered by the evidentiary limitations and instead could be considered "other medical evidence." *Dempsey* at 5; s*ee* 20 C.F.R. § 718.107(a) (allowing consideration of medical evidence not specifically addressed by the regulations). Second, the Board found that it was error to exclude pulmonary function tests and arterial blood gases derived from a claimant's medical records simply because they had been proffered for the purpose of exceeding the evidentiary limitations. *Dempsey* at 5. Third, the Board held that state claim medical evidence is properly excluded if it contains testing that exceeds the evidentiary limitations at § 725.414. In so holding, the Board noted that such records did not fall within the exceptions for hospitalization or treatment records or for evidence from prior federal black lung claims. *Dempsey* at 5.

In this case, the parties have complied with the evidentiary limitations.

Merits of the Claim

To prevail in a claim for Black Lung benefits, a claimant miner must establish that he or she suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; that he or she is totally disabled, as defined in section 718.204; and that the total disability is due to pneumoconiosis. 20 C.F.R. §§718.202 to 718.204. The Supreme Court has made it clear that the burden of proof in a black lung claim lies with the claimant, and if the evidence is evenly balanced, the claimant must lose. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 281 (1994). In *Greenwich Collieries*, the Court invalidated the "true doubt" rule, which gave the

benefit of the doubt to claimants. *Id.* Thus, in order to prevail in a black lung case, a claimant must establish each element by a preponderance of the evidence.

Existence of Pneumoconiosis

The regulations (both in their original form and as revised effective January 19, 2001) provide several means of establishing the existence of pneumoconiosis: (1) a chest x-ray meeting criteria set forth in 20 C.F.R. §718.102, and in the event of conflicting x-ray reports, consideration is to be given to the radiological qualifications of the persons interpreting the x-rays; (2) a biopsy or autopsy conducted and reported in compliance with 20 C.F.R. §718.106; (3) application of the irrebuttable presumption for "complicated pneumoconiosis" set forth in 20 C.F.R. §718.304 (or two other presumptions set forth in §718.305 and §718.306); or (4) a determination of the existence of pneumoconiosis as defined in §718.201 made by a physician exercising sound judgment, based upon objective medical evidence and supported by a reasoned medical opinion. 20 C.F.R. §718.202(a) (1)-(4). Under section 718.107, other medical evidence, and specifically the results of medically acceptable tests and procedures which tend to demonstrate the presence or absence of pneumoconiosis, may be submitted and considered. At least one United States Court of Appeals (the Fourth Circuit) has held that all of the evidence from section 718.202 should be weighed together in determining whether a miner suffers from pneumoconiosis. *See, e.g., Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-209 (4th Cir. 2000). *But see Furgerson v. Jericol Mining, Inc.*, 22 B.L.R. 1-216 (2002) (en banc) (noting "the Sixth Circuit has often approved the independent application of the subsections of Section 718.202(a) to determine whether claimant has established the existence of pneumoconiosis.")

Because pneumoconiosis is a progressive and irreversible disease, it may be appropriate to accord greater weight to the most recent evidence of record, especially where a significant amount of time separates newer evidence from that evidence which is older. *Clark v. Karst-Robbins Coal Co*., 12 B.L.R. 1-149 (1989) (en banc); *Casella v. Kaiser Steel Corp*., 9 B.L.R. 1-131 (1986).

In the recent amendments to the regulations, the definition of pneumoconiosis in section 718.201 has been amended to provide for "clinical" and "legal" pneumoconiosis and to acknowledge the latency and progressiveness of the disease. Clinical pneumoconiosis consists of those diseases recognized by the medical community as pneumoconiosis, such as coal worker's pneumoconiosis or silicosis. Legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a). The regulation further indicates that a lung disease arising out of coal mine employment includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

X-Ray Evidence. The x-ray evidence submitted in connection with the instant case is summarized above. Of four x-ray readings (not including a "quality only" reading) of two x-rays, taken on August 15, 2002 and December 7, 2002, only one reading (Dr. Baker's reading of the August 15, 2002 x-ray) was positive for pneumoconiosis; Dr. Baker is a pulmonologist who is qualified as a B-reader. However, that same x-ray was read as negative by a more qualified

reader, Dr. Poulos, who is dually qualified as a B-reader and board certified radiologist. Furthermore, the x-ray of December 7, 2002 was read as negative for pneumoconiosis by a B-reader and pulmonologist (Dr. Broudy) and by a reader who is dually qualified as a B-reader and board certified radiologist (Dr. Halbert). Therefore, the preponderance of the x-ray readings, including all of the readings by dually qualified B-readers who were also board certified radiologists, were negative for pneumoconiosis. Claimant has failed to meet the preponderance of the x-ray evidence standard in establishing pneumoconiosis, and Claimant cannot prevail under 20 C.F.R. §718.202(a)(1).

Autopsy or Biopsy Evidence. There is no pathological evidence of record. I therefore find that the Claimant has not established that he suffers from pneumoconiosis under 20 C.F.R. §718.202(a)(2).

Complicated Pneumoconiosis and Other Presumptions. A claimant can also demonstrate pneumoconiosis presumptively under section 718.202(a)(3). A finding of opacities of a size that would qualify as "complicated pneumoconiosis" under 20 C.F.R. §718.304 results in an irrebuttable presumption of total disability. There is no evidence of complicated pneumoconiosis, so the section 718.304 presumption is inapplicable. The additional presumptions described in section 718.202(a)(3), which are set forth in 20 C.F.R. §718.305 and 20 C.F.R. §718.306, are also inapplicable, inter alia, because they do not apply to claims filed after January 1, 1982 or June 30, 1982, respectively. Further, section 718.306 only applies to deceased miners. Thus, Claimant has failed to establish the presence of pneumoconiosis under 20 C.F.R. §718.202(a)(3).

Medical Opinions on Pneumoconiosis. In addition to the x-ray readings (discussed above), medical opinions of three doctors (Drs. Baker, Dahhan, and Rosenberg) addressed the issue of whether the Claimant suffers from pneumoconiosis. All three physicians are highly qualified, board-certified pulmonologists. Of these physicians, only Dr. Baker found that the Claimant suffered from pneumoconiosis as defined in the regulations.

The only articulated basis for Dr. Baker's diagnosis of coal worker's pneumoconiosis (clinical pneumoconiosis) was an abnormal chest x-ray and coal dust exposure. Thus, Dr. Baker relied upon his own reading of the x-ray taken at the time of the examination in making the diagnosis of CWP. However, that x-ray was read as negative by a more qualified reader, as was a subsequent x-ray, and I have already found the x-ray evidence to preponderate against a finding of pneumoconiosis. Thus, Dr. Baker's opinion does not substantiate a diagnosis of clinical pneumoconiosis.

Although Dr. Baker also found the Claimant to have chronic bronchitis (based upon the history of cough, sputum production and wheezing) and hypoxemia (based upon the PO2 reading on the arterial blood gases) and he attributed both conditions to the combined effects of coal dust exposure and cigarette smoking, he did not explain the basis for that conclusion apart from the Claimant's exposure to the etiological agents of coal mine dust and cigarette smoke. Moreover, while Dr. Baker's diagnoses of "chronic bronchitis" and "hypoxemia" might qualify as legal pneumoconiosis, Dr. Baker has failed to establish that either of these conditions was a "chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or

substantially aggravated by, dust exposure in coal mine employment," as required by the amended regulations. 20 C.F.R. §718.201(b). In fact, he found "no impairment" on the addendum to his report. On the whole, Dr. Baker's opinion is not a well reasoned, well documented opinion supporting a finding that the Claimant suffers from legal pneumoconiosis. *See Fields v. Island Creek Coal Co.*, 10 B.L.R. 1-19, 1-22 (BRB 1987) (explaining that a "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis, and a "reasoned" opinion is one in which the underlying documentation is adequate to support the physician's conclusions).

Drs. Dahhan summarized the test results and physical findings in his examination report and deposition and he concluded that the Claimant did not have either occupational pneumoconiosis or any other pulmonary disability secondary to coal dust exposure. In reaching those conclusions, Dr. Dahhan relied upon the negative chest x-rays (as interpreted by himself and by the most qualified readers) and the lack of respiratory impairment. His report is therefore reasoned and documented and tends to negate a finding of either form of pneumoconiosis.

Dr. Rosenberg reviewed the medical evidence and opined that the Claimant did not suffer from simple or complicated CWP (clinical pneumoconiosis) or COPD (legal pneumoconiosis.) His report was reasoned and documented and tends to negate a finding of either form of pneumoconiosis.

In reviewing the reports of these three physicians, I find Dr. Dahhan's report and deposition and Dr. Rosenberg's report to be better reasoned and documented. In this regard, the preponderance of negative chest x-rays support the findings by Drs. Dahhan and Rosenberg of no clinical pneumoconiosis and outweigh Dr. Baker's finding to the contrary. Further, the nonqualifying pulmonary function tests and arterial blood gases, suggesting no impairment, support the finding by Dr. Dahhan of no legal pneumoconiosis and by Dr. Rosenberg of no COPD. In fact, Dr. Baker also found no impairment. However, even if there were some impairment, Dr. Baker has failed to find that it was significantly related to or substantially aggravated by coal mine dust exposure and he has articulated no reason for attributing any impairment to coal mine dust. Coal dust exposure alone is an insufficient articulated basis for a diagnosis of pneumoconiosis. *See, e.g., Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 B.L.R. 2-323 (4th Cir. 1998). It is the Claimant's burden of proof and he had not met that burden with Dr. Baker's essentially unreasoned opinion. As a whole, I find that the preponderance of the medical opinion evidence does not support a finding of clinical or legal pneumoconiosis.

Other Evidence of Pneumoconiosis. The only other evidence of record relevant to the issue of pneumoconiosis is Claimant's testimony. However, his testimony alone is insufficient to establish the existence of pneumoconiosis. 20 C.F.R. §718.202(c).

All Evidence on Pneumoconiosis. Taking into consideration all of the evidence on the issue of the existence of pneumoconiosis, I find that the Claimant has failed to establish pneumoconiosis based upon the evidence of record considered as a whole.

CONCLUSION

Because Claimant cannot establish that he suffers from pneumoconiosis by a preponderance of the evidence, Claimant cannot establish a necessary element of a claim for benefits under the Black Lung Benefits Act. Accordingly, this claim must be denied and it is unnecessary to address the remaining issues.

ORDER

IT IS HEREBY ORDERED that the claim of David J. Estep for black lung benefits under the Act be, and hereby is, **DENIED.**

A
PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within thirty (30) days from the date of this Decision and Order by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington, D.C. 20013-7601. A copy of the Notice of Appeal must also be served on the Associate Solicitor for Black Lung Benefits at the Frances Perkins Building, 200 Constitution Avenue, N.W., Room N-2117, Washington, D.C. 20210.